

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAVID SHULICK : CIVIL ACTION

v. :

CREDIT BUREAU COLLECTION :
SERVICES, INC., individually :
and d/b/a CBCS and CBCS :
NATIONAL, INC. :

NO. 02-1127

- - - - -
DAVID SHULICK, individually :
and on behalf of all others :
similarly situated :

CIVIL ACTION

v. :

CBC COMPANIES, INC., :
individually, t/a and d/b/a :
CBCS and CBCS NATIONAL, INC. :

NO. 02-8483

MEMORANDUM AND ORDER

Fullam, Sr. J.

February , 2004

On March 24, 2003, I granted plaintiffs' unopposed motion for class certification. After various pretrial proceedings, the case was scheduled for trial to commence on February 2, 2004. Shortly before trial, the parties filed a flurry of motions: Plaintiffs' Motion for Summary Judgment, Defendant CBC Companies' Cross-Motion for Summary Judgment, Defendants' Motion for Leave to Identify an Out-of-Time Expert Witness, defendant's amended motion to the same effect, etc. The day of the scheduled trial, the Court learned for the first time that plaintiffs' counsel had neglected to provide any notice

to the class members, he being of the view that it would suffice to send out such notices after the trial (!!).

Two days before the scheduled trial, defendant filed a motion to decertify the class, based upon the failure to give notice. This motion, and plaintiff's response, were presented to the Court at the time appointed for the commencement of trial. In these circumstances, it was obvious the trial could not proceed. The Court determined that, because the statute of limitations has expired since these actions were filed, and since at least some members of the class may have been aware of the filing of these actions and assumed that the statute of limitations was no longer a problem, the preferable course was to afford the named plaintiff and his counsel an opportunity to provide the required notice to the class, with leave to opt-out, etc. (this being a Rule 23(b)(3) action).

Turning now to the pending motions, the motion for decertification of the class will be denied. Plaintiff's motion for summary judgment will be granted in part and denied in part. Both parties will be granted additional time identify witnesses and otherwise complete their trial preparations; defendants' motion to identify an expert witness will be dismissed as moot in view of this ruling. And, finally, defendant CBC Companies, Inc.'s motion for summary judgment will be denied.

I. Liability of Credit Bureau Collection Services, Inc.

As discussed in my Memorandum and Order of March 24, 2003, it is undisputed that the defendant Credit Bureau Collection Services, Inc. is a "debt collector" within the meaning of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq., and that it caused to be mailed to approximately 2,875 persons who owed money to the defendant's client, Verizon Communications, letters which were in technical violation of the statute, because the envelopes partially revealed the content of the letters, and disclosed, to the casual observer, that the persons to whom the letters were mailed had an account with Verizon and owed specified sums of money. This violated § 1692f(8) of the statute. I therefore conclude that plaintiff is entitled to summary judgment to the effect that the violations occurred. As to the defendant Credit Bureau Collection Services, Inc., the only remaining issue is whether the defendant is entitled to the exemption provided in § 1692k(c) of the statute, exempting from liability a debt collector who "shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error." Whether that defense is available involves factual issues which cannot be resolved on a motion for summary judgment. Accordingly, as to the defendant Credit Bureau Collection

Services, Inc., the only issue on liability which requires trial is the § 1692k(c) issue.

II. Motion of CBC Companies, Inc. for Summary Judgment

CBC Companies, Inc. is the parent company of Credit Bureau Collection Services, Inc. The parent company has a net worth in excess of \$50 million. If it is found liable, the maximum recovery on behalf of the entire class would be \$500,000 (1% of the parent's net worth). But the collection-agency subsidiary, Credit Bureau Collection Services, Inc. is alleged to have a much lower net worth. If it is the only defendant found liable, the potential recovery on behalf of the class would be limited to approximately \$11,000 or \$12,000 (1% of net worth).

There is undoubtedly a close working relationship between parent and subsidiary, but the parent company has apparently attempted to avoid being held responsible for any violations committed by the subsidiary. The parent company is a large concern engaged in many different lines of business. Shortly before the violations involved in this case occurred, the subsidiary was relocated from the home office to a separate facility some 20 miles away. On the other hand, the actual mailing of the letters was handled by the parent company, as part of the service which it routinely provides to its subsidiaries (and gets reimbursed for); most, if not all, of the officers and

directors of the subsidiary are also officers or directors of the parent company; and the parent company handles payroll for the subsidiary. There is also evidence that, at the time the violations involved in this case occurred, the parent company had registered the trade name "Credit Bureau Collection Services, Inc." as one of its trade names, at least in the State of Ohio where the firms are located. I conclude that there are legitimate factual issues which preclude summary judgment with respect to the potential liability of CBC Companies, Inc.

An Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAVID SHULICK	:	CIVIL ACTION
	:	
v.	:	
	:	
CREDIT BUREAU COLLECTION	:	
SERVICES, INC., individually	:	
and d/b/a CBCS and CBCS	:	
NATIONAL, INC.	:	NO. 02-1127

- - - - -	- - - - -	- - - - -
DAVID SHULICK, individually	:	CIVIL ACTION
and on behalf of all others	:	
similarly situated	:	
	:	
v.	:	
	:	
CBC COMPANIES, INC.,	:	
individually, t/a and d/b/a	:	
CBCS and CBCS NATIONAL, INC.	:	NO. 02-8483

ORDER

AND NOW, this day of February 2004, IT IS

ORDERED:

1. Plaintiff is granted an extension of time of 60 days in which to submit a proposed form of notice to the class, and in which to send the approved notice to the class members.

2. Both parties are granted a 30-day extension of time in which to identify any witnesses, expert or otherwise, not previously disclosed, and to conduct further discovery if required.

3. The motion of defendant CBC Companies, Inc. for Summary Judgment is DENIED.

4. Plaintiff's Motion for Summary Judgment is
GRANTED IN PART AND DENIED IN PART, as follows:

- (a) Plaintiff's motion as to the liability of Credit Bureau Collection Services, Inc. is GRANTED to the extent that it is now established that the letters which are the subject of these actions violated the provisions of 15 U.S.C. § 1692f(8). As to the defendant Credit Bureau Collection Services, Inc., the only remaining issues to be resolved at trial have to do with the exemption for unintentional violations provided in 15 U.S.C. § 1692k(c).
 - (b) As to the remaining defendants, Plaintiff's Motion for Summary Judgment is DENIED.
5. All other pending motions are DENIED.

John P. Fullam, Sr. J.